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10/538,323

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EXAMINER

ALLEN, CAMERON J

ART UNIT

PAPER NUMBER

1709

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/538,323

**Applicant(s)**

ELLSWORTH ET AL.

**Examiner**

Cameron J. Allen

**Art Unit**

1709

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-8 is/are rejected.
- 7) ☒ Claim(s) 2 and 3 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 6/10/2005.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, and 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Levine US 5,707,876.

Regarding claim 1, Levine teaches a disk assembly for use in centrifugation comprising a first and second elements arranged for relative movement and made of materials having respective densities such that said first element floats above said second element in a fluid, and said second element assumes a predetermined position in said fluid. (Column 4 line 1-5)

Regarding claim 4, Levine teaches a floating element for assuming a predetermined position between components of different densities wherein said element is made of materials having a density gradient in a vertical direction. (Column 3 line 22-25)

Regarding claim 5, Levine teaches a floating element according to claim 4 wherein said element is conical. (Fig 1 #14, 16, 18)

Regarding claim 6, Levine teaches a floating element according to claim 4 further comprising a peripheral seal. (Claims 4 and 5b)

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Claims 4 - 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Coleman et al US 5,456,885.

Regarding claim 4, Coleman teaches a floating element for assuming a predetermined position between components of different densities wherein said element is made of materials having a density gradient in a vertical direction. (Column 2 line 37-40)

Regarding claim 5, Coleman teaches a floating element according to claim 4 wherein said element is conical. (Fig 5)

Regarding claim 6, Coleman teaches a floating element according to claim 4 further comprising a peripheral seal. (Column 3 line 43-45) *The examiner interprets the halting of fluid flow to be a seal.*

Regarding claim 7, Coleman teaches a floating element according to claim 6 in combination with a syringe. (Column 2 line 28)

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Coleman in view of Levine as applied to claims 1 and 4 above.

Regarding claim 8, Coleman teaches a method of separating components comprising the steps of providing a syringe (Column 2 line 28) with a floating element (Column 3 line 43-45) drawing fluid into said syringe (Column 2 line 28-29), placing said syringe and fluid in a centrifuge and subjecting them to centrifugation (Column 2 line 42), and expressing separated components from said syringe (Column 2 line 42-43), but does not teach providing more than one separating component or being connected for relative movement and configured to provide a maximum distance between them. Levin does teach providing more than one separating component or being connected for relative movement and configured to provide a maximum distance between them. (Levine Column 3 line 51-55) (Levine Fig 2 #14,16,18) The examiner interprets the floats making a seal with the tube as being connected. The examiner interprets the floats to be at a maximum distance from each other based on density differences. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Coleman with Levine, since it would give the added benefit of separating multiple fluids instead of two.

***Allowable Subject Matter***

6. Claims 2 and 3 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The prior art does not teach further including a pin extending from said first element and carrying said second element.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cameron J. Allen whose telephone number is 571-2703164. The examiner can normally be reached on Mon-Fri 8-5 alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on 571-272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CJA

  
WALTER D. GRIFFIN  
SUPERVISORY PATENT EXAMINER